



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2023-003683

First-tier Tribunal No:
PA/00183/2022
PA/54716/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 16 August 2024**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**SSM
(ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms A Supaveda, counsel instructed by Hanson Law
For the Respondent: Ms S Simbi, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 16 August 2024

Order Regarding Anonymity

As the underlying decision in this appeal is a decision to refuse a claim for asylum, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is a national of Iraq and of Kurdish ethnicity. He arrived in the United Kingdom in December 2018 and claimed asylum. The claim was refused by the respondent on 10 September 2021 and the appellant's appeal against that decision was dismissed by FtT Judge Hena ("Judge Hena") for reasons set out in a decision promulgated on 4 May 2023.
2. The appellant claims the decision of Judge Hena is vitiated by material errors of law. Five grounds of appeal are relied upon. The appellant notes Judge Hena accepted, at paragraph [19] of the decision, that the appellant was detained by Hashd Al Shabi when the appellant's village (Haftaghar, a small village in Kirkuk) was attacked. However, the appellant claims Judge Hena rejected the appellant's subsequent account of events by saying it was hard to believe that after suffering a wound he carried on wearing shoes, the wound did not get infected, and he was able to wait for treatment when he escaped. That, the appellant claims, is to rely upon what the Judge considered reasonable, rather than to consider the appellant's account in context. Second, the appellant claims the Judge provides inadequate reasons for concluding that the appellant's evidence that he went into hiding is inconsistent with his claim that he sought medical treatment. Third, the appellant claims Judge Hena failed to make a finding as to whether the appellant's claim that his father was killed because of a land dispute is accepted or rejected. That was an issue relevant to the overall credibility of the appellant. Fourth, the appellant claims Judge Hena failed to adequately consider the appellant's claim regarding his *sur place* activities and the risk upon return because of those activities. Finally, the appellant claims Judge Hena failed to adequately consider the risk upon return by reference to the documents required to facilitate safe passage to the appellant's home area or elsewhere in Iraq.
3. Permission to appeal was granted on all grounds by First-tier Tribunal Judge Gumsley on 21 August 2023. Judge Gumsley said:

"...As to the substantive grounds, in my view it is arguable

- that the FtT Judge did not provide adequate reasons as to why she rejected the account as to him treating his wounds, seeking medical treatment and being released on a bribe.
- that the analysis of *sur place* activity and any risk that may flow from that, is also inadequate, particularly that the FtT Judge refers to monitoring of the Kurdish Government whilst suggesting the Appellant could relocate to Kirkuk (which is not within the control of the Kurdish Government).
- that the FtT Judge's analysis of the issue of documentation and redocumentation is inadequate.

It is more difficult to understand the materiality of any lack of finding as to the land dispute, and a judge is entitled to not make findings where there is insufficient evidence to do so...."

4. At the hearing of the appeal before me, Ms Simbi, quite properly in my judgement, concedes the decision of Judge Hena is vitiated by a material error of law and should be set aside. She accepts Judge Hena failed, in

particular, to properly engage with the relevant country guidance when addressing the risk upon return by reference for the need for relevant documentation. She concedes it was not sufficient for Judge Hena to simply say:

“32. In relation to the case law of *SMO*, cited above, it is accepted that there can be issues with obtaining ID for Iraq is that and that can lead to risk. However, in this case I find that the appellant does have family in Iraq who can assist him in relocating to the Kurdish areas of Iraq.

33. I agree with the respondent the opponent would be able to rely on his uncle as he did so previously to assist him in documentation for his return.”

5. Ms Simbi, again quite properly in my judgement, accepts the decision of the FtT must therefore be set aside. She acknowledges that the reasons given by Judge Hena for rejecting the core of the appellant’s account are brief, and adopting a pragmatic approach, if the appeal is to be re-heard, the appropriate course is for the appeal to be heard afresh with no findings preserved.
6. Ms Supaveda acknowledged that given the structure of the decision and reasons given by Judge Hena, it is difficult to disentangle any discrete findings that can be preserved beyond what was already accepted by the respondent as set out in paragraph [4] of the decision of Judge Hena.

Decision

7. The appellant’s claim before the FtT is summarised at paragraph [9] of the decision. The Judge summarised her findings as to the core of the appellant’s claim in paragraph [23] as follows:

“Whilst I accept, he was detained by Hasht Al Shabi I do not find he was shot in the camp and nor do I accept he was released on a bribe. I find instead, given he could offer no information, they released him. I do accept he was mistreated by the group and that his home area was no longer safe for him as a Kurd. But I do not find that he in particular was of adverse interest, rather many men in his home area were also detained and those that were of no use were released.”
8. Judge Hena said, at [24], that there was insufficient information before her to conclude that the appellant's father was killed in a land dispute. It appears that Judge Hena went on to find that there is insufficient protection available to the appellant in his home area, but there would be adequate protection available to him in other areas that are friendly towards Kurds. Judge Hena said, at [27], the appellant could relocate to Kurdistan, and she rejected his claim that he would face obstacles there. Judge Hena addressed the appellant’s claim as to the risk arising from *sur place* activities and documentation in the briefest of terms at paragraphs [29] to [33] of the decision.
9. Although brevity is often to be commended, it must not be to the detriment of sufficient reasons so that the parties can understand the basis upon which claims made are either accepted or rejected. I accept the decision of Judge Hena is vitiated by material errors of law and must be set aside for the reasons accepted by Ms Simbi.

10. As to disposal, I have considered whether the proper course is to remit the appeal or to order that the decision be remade in the Upper Tribunal. In doing so, I have considered what was said in Begum (remaking or remittal) [2023] UKUT 46 (IAC). Given that the decision on the appeal needs to be taken afresh and given the nature of the errors into which the FtT fell, I have concluded that the just and proper course is to remit the appeal to the FtT for rehearing.

Notice of Decision

11. The appeal to the Upper Tribunal is allowed.
12. The decision of First-tier Tribunal Judge Hena is set aside.
13. The appeal is remitted to the First-tier Tribunal for hearing afresh with no findings preserved.
14. The parties will be advised of a hearing date in due course.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 August 2024